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**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

EDITH DIXON, individually and on
 behalf of all others similarly situated,

 Plaintiff,

vs.

MONTEREY FINANCIAL
 SERVICES, INC.,

 Defendant.

) Case No.

) **CLASS ACTION**

) **COMPLAINT FOR VIOLATIONS
 OF:**

1. NEGLIGENT VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227 ET
 SEQ.]
2. WILLFUL VIOLATIONS
 OF THE TELEPHONE
 CONSUMER PROTECTION
 ACT [47 U.S.C. §227 ET
 SEQ.]
3. VIOLATIONS OF
 ELECTRONIC FUNDS
 TRANSFER ACT [15 U.S.C.
 §1693 ET SEQ.]
4. FAIR DEBT COLLECTION
 Fair Debt Collection
 Practices Act, 15 U.S.C. §
 1692, *et seq.*

) **DEMAND FOR JURY TRIAL**

1 Plaintiff EDITH DIXON (“Plaintiff”), individually and on behalf of all
2 others similarly situated, alleges the following upon information and belief based
3 upon personal knowledge:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others
6 similarly situated seeking damages and any other available legal or equitable
7 remedies resulting from the illegal actions of MONTEREY FINANCIAL
8 SERVICES, INC. (Defendant”) in negligently, knowingly, and/or willfully
9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
10 Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading
11 Plaintiff’s privacy.

12 2. Plaintiff also brings this action as a result of the illegal conduct of
13 Defendant debiting Plaintiff’s and also the putative EFTA Class members’ bank
14 accounts on a recurring basis without obtaining a written authorization signed or
15 similarly authenticated for preauthorized electronic fund transfers from Plaintiff’s
16 and also the putative EFTA Class members’ accounts, thereby violating Section
17 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation
18 E, 12 C.F.R. § 205.10(b).

19 3. In addition to Plaintiff’s Class Claims, Plaintiff also brings an action
20 for damages as an individual consumer for Defendant’s violations of the federal
21 Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter
22 “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive,
23 and unfair practices.

24 **JURISDICTION & VENUE**

25 4. This Court has jurisdiction under 28 U.S.C. 1331, because this action
26 is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*

27 5. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m),
28 which states that, “without regard to the amount in controversy, any action under

1 this section may be brought in any United States district court.”

2 6. Venue is proper in the United States District Court for the Northern
3 District of California pursuant to *18 U.S.C. 1391(b)* and *18 U.S.C. § 1441(a)*
4 because Defendant does business within the state of California and the Northern
5 District of California.

6 **PARTIES**

7 7. Plaintiff, Edith Dixon (“Plaintiff”), is a natural person residing in
8 Alameda County in the state of California and is a “person” as defined by *47*
9 *U.S.C. § 153 (10)*.

10 8. Defendant, Monterey Financial Services, Inc. (“Defendant”), is a
11 company involved in debt recovery, loan servicing, and consumer financing and
12 is a “person” as defined by *47 U.S.C. § 153 (10)*.

13 **FACTUAL ALLEGATIONS-TCPA**

14 9. Defendant contacted Plaintiff on her cellular telephone, ending in -
15 1147, in an attempt to collect an alleged outstanding debt.

16 10. Plaintiff revoked her consent to be called by Defendant. However,
17 Defendant continued to call Plaintiff on her cellular telephone.

18 11. Defendant used an “automatic telephone dialing system”, as defined
19 by *47 U.S.C. § 227(a)(1)* to place its daily calls to Plaintiff seeking to collect the
20 debt allegedly owed

21 12. Defendant’s calls constituted calls that were not for emergency
22 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

23 13. Defendant’s calls were placed to telephone number assigned to a
24 cellular telephone service for which Plaintiff incurs a charge for incoming calls
25 pursuant to *47 U.S.C. § 227(b)(1)*.

26 14. Accordingly, Defendant never received Plaintiff’s “prior express
27 consent” to receive calls using an automatic telephone dialing system or an
28 artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. §*

227(b)(1)(A).

FACTUAL ALLEGATIONS-EFTA

15. Beginning in and around November 2014, Defendant began withdrawing payments from Plaintiff's account without his authorization.

16. Plaintiff took out a loan with Defendant in or around November 2014. Plaintiff agreed to a payment plan over the phone with Defendant but did not authorize any withdrawals from her account in writing.

17. Plaintiff did not provide Defendant either with a written or an electronic signature authorizing the recurring or automatic payments.

18. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a "preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made."

19. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term "preauthorized electronic fund transfer" means "an electronic fund transfer authorized in advance to recur at substantially regular intervals."

20. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that "[p]reauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer."

21. Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that "[t]he authorization process should evidence the consumer's identity and assent to the authorization." *Id.* at ¶10(b), comment 5. The Official Staff Commentary further provides that "[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable." *Id.* at ¶10(b), comment 6.

22. In multiple instances, Defendant debited bank accounts of the Class

1 members on a recurring basis without obtaining a written authorization signed or
2 similarly authenticated by the respective Class members for preauthorized
3 electronic fund transfers from the accounts of the respective Class members,
4 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
5 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

6 23. In multiple instances, Defendant debited Class members' bank
7 accounts on a recurring basis without providing a copy of a written authorization
8 signed or similarly authenticated by the respective Class members for
9 preauthorized electronic funds transfers, thereby violating Section 907(a) of the
10 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
11 205.10(b).

12 **FACTUAL ALLEGATIONS-FDCPA**

13 24. In addition to the facts pled above, at various times prior to the filing
14 of the instant complaint, including within one year preceding the filing of this
15 complaint, Defendant contacted Plaintiff in an attempt to collect an alleged
16 outstanding debt.

17 25. Plaintiff began receiving numerous calls from Defendant, with such
18 regularity and frequency as to constitute harassment under the circumstances.

19 26. Plaintiff asked Defendant to stop calling her cellular telephone.

20 27. However, Defendant continued to call Plaintiff after she revoked her
21 consent to be called on her cellular telephone.

22 28. Defendant's conduct violated the FDCPA in multiple ways,
23 including but not limited to:

24 a) Causing a telephone to ring repeatedly or continuously to annoy
25 Plaintiff (Cal Civ Code § 1788.11(d));

26 b) Communicating, by telephone or in person, with Plaintiff with such
27 frequency as to be unreasonable and to constitute an harassment to
28 Plaintiff under the circumstances (Cal Civ Code § 1788.11(e));

- c) Causing Plaintiff's telephone to ring repeatedly or continuously with intent to harass, annoy or abuse Plaintiff (§ 1692d(5));
- d) Communicating with Plaintiff at times or places which were known or should have been known to be inconvenient for Plaintiff (§1692c(a)(1));and
- e) Engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff (§ 1692d)).

29. As a result of the above violations of the FDCPA, Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal humiliation, embarrassment, mental anguish and emotional distress, and Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

CLASS ALLEGATIONS

30. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed TCPA class (hereafter "The TCPA Class") defined as follows:

All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

31. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed EFTA class (hereafter "The EFTA Class") defined as follows:

All persons in the United States whose bank accounts were debited on a reoccurring basis by Defendant

1 without Defendant obtaining a written authorization
2 signed or similarly authenticated for preauthorized
3 electronic fund transfers within the one year prior to the
4 filing of this Complaint.

5 32. Plaintiff represents and is a member of both the TCPA and EFTA
6 classes (hereafter “The Classes”), consisting of all persons within the United
7 States who received any collection telephone calls from Defendant to said
8 person’s cellular telephone made through the use of any automatic telephone
9 dialing system or an artificial or prerecorded voice and such person had not
10 previously not provided their cellular telephone number to Defendant within the
11 four years prior to the filing of this Complaint, and all persons in United States
12 whose bank accounts were debited on a reoccurring basis by Defendant without
13 Defendant obtaining a written authorization signed or similarly authenticated for
14 preauthorized electronic fund transfers within the one year prior to the filing of
15 this Complaint

16 33. Defendant, its employees, and agents are excluded from The Classes.
17 Plaintiff does not know the number of members in The Classes, but believes the
18 members of each class number in the thousands, if not more. Thus, this matter
19 should be certified as a Class Action to assist in the expeditious litigation of the
20 matter.

21 34. Each Class is so numerous that the individual joinder of all of its
22 members is impractical. While the exact number and identities of the Class
23 members are unknown to Plaintiff at this time and can only be ascertained
24 through appropriate discovery, Plaintiff is informed and believes and thereon
25 alleges that each Class includes thousands of members. Plaintiff alleges that the
26 Class members may be ascertained by the records maintained by Defendant.

27 35. Plaintiff and members of each Class were harmed by the acts of
28 Defendant in at least the following ways: Defendant illegally contacted Plaintiff

1 and Class members via their cellular telephones thereby causing Plaintiff and
2 Class members to incur certain charges or reduced telephone time for which
3 Plaintiff and Class members had previously paid by having to retrieve or
4 administer messages left by Defendant during those illegal calls, and invading the
5 privacy of said Plaintiff and Class members.

6 36. Common questions of fact and law exist as to all members of The
7 TCPA Class which predominate over any questions affecting only individual
8 members of The TCPA Class. These common legal and factual questions, which
9 do not vary between TCPA Class members, and which may be determined
10 without reference to the individual circumstances of any TCPA Class members,
11 include, but are not limited to, the following:

- 12 a. Whether, within the four years prior to the filing of this
13 Complaint, Defendant made any collection call (other than a
14 call made for emergency purposes or made with the prior
15 express consent of the called party) to a Class member using
16 any automatic telephone dialing system or any artificial or
17 prerecorded voice to any telephone number assigned to a
18 cellular telephone service;
- 19 b. Whether Plaintiff and the Class members were damaged
20 thereby, and the extent of damages for such violation; and
- 21 c. Whether Defendant should be enjoined from engaging in such
22 conduct in the future.

23 37. There are questions of law and fact common to the EFTA Class
24 affecting the parties to be represented. The questions of law and fact to the
25 EFTA Class predominate over questions which may affect individual Class
26 members and include, but are not necessarily limited to, the following:

- 27 a. The members of the Class entered into oral agreements with
28 Defendant to have automatic, or recurring, electronic payments

1 drawn from their personal accounts to be paid to Defendant towards
2 settlement of the Class members' outstanding accounts with
3 Defendant.

4 b. The members of the Class were not provided with, nor did
5 they execute, written agreements memorializing the automatic or
6 recurring electronic payments.

7 c. Defendant did not request, nor did it provide, Class members
8 with written agreements memorializing the automatic or recurring
9 electronic payments.

10 d. The members of the Class did not provide either a written
11 ("wet") or otherwise electronic signature authorizing the automatic
12 or recurring electronic payments.

13 e. Despite not providing written or electronic authorization for
14 payments to be drawn from their accounts, Defendant took
15 unauthorized payments from Class members' accounts.

16 f. The unauthorized payments taken by Defendant frequently
17 subjected Class members to non-sufficient funds ("NSF") fees,
18 penalties, and other charges to be incurred by the Class members at
19 their respective financial and banking institutions, as well as
20 negative reporting to Class members' credit histories, with serious
21 adverse consequences to the Class members' credit-worthiness.

22 38. As a person that received numerous collection calls from Defendant
23 using an automatic telephone dialing system or an artificial or prerecorded voice,
24 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
25 typical of The TCPA Class.

26 39. As a person whose bank account was debited on a reoccurring basis
27 by Defendant without Defendant obtaining a written authorization signed or
28 similarly authenticated for preauthorized electronic fund transfers, Plaintiff is

1 asserting claims that are typical of The EFTA Class.

2 40. Plaintiff will fairly and adequately protect the interests of the
3 members of each Class. Plaintiff has retained attorneys experienced in the
4 prosecution of class actions.

5 41. A class action is superior to other available methods of fair and
6 efficient adjudication of this controversy, since individual litigation of the claims
7 of all Class members is impracticable. Even if every Class member could afford
8 individual litigation, the court system could not. It would be unduly burdensome
9 to the courts in which individual litigation of numerous issues would proceed.
10 Individualized litigation would also present the potential for varying, inconsistent,
11 or contradictory judgments and would magnify the delay and expense to all
12 parties and to the court system resulting from multiple trials of the same complex
13 factual issues. By contrast, the conduct of this action as a class action presents
14 fewer management difficulties, conserves the resources of the parties and of the
15 court system, and protects the rights of each Class member.

16 42. The prosecution of separate actions by individual Class members
17 would create a risk of adjudications with respect to them that would, as a practical
18 matter, be dispositive of the interests of the other Class members not parties to
19 such adjudications or that would substantially impair or impede the ability of such
20 non-party Class members to protect their interests.

21 43. Defendant has acted or refused to act in respects generally applicable
22 to each Class, thereby making appropriate final and injunctive relief with regard
23 to the members of the California Class as a whole.

24 **FIRST CAUSE OF ACTION**

25 **Negligent Violations of the Telephone Consumer Protection Act**

26 **47 U.S.C. §227 et seq.**

27 44. Plaintiff repeats and incorporates by reference into this cause of
28 action the allegations set forth above at Paragraphs 1-43.

45. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

46. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

47. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

48. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-47.

49. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

50. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

51. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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THIRD CAUSE OF ACTION

Violations of the Electronic Funds Transfer Act

15 U.S.C. §1693 et seq.

52. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a “preauthorized electronic fund transfer from a consumer’s account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made.”

53. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term “preauthorized electronic fund transfer” means “an electronic fund transfer authorized in advance to recur at substantially regular intervals.”

54. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.”

55. Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he authorization process should evidence the consumer’s identity and assent to the authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further provides that “[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.” *Id.* at ¶10(b), comment 6.

56. In multiple instances, Defendant has debited Plaintiff’s and also the putative Class members’ bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers from Plaintiff’s and also the putative Class members’ accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

57. In multiple instances, Defendant has debited Plaintiff’s and also the

putative Class members' bank accounts on a recurring basis without providing a copy of a written authorization signed or similarly authenticated by Plaintiff or the putative Class members for preauthorized electronic fund transfers, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

FOURTH CAUSE OF ACTION

Violations of the federal Fair Debt Collection Practices Act

15 U.S.C. § 1692 et seq.

58. Plaintiff repeats and reincorporates by reference into this cause of action allegations set forth above at paragraphs 1-57.

59. To the extent that Defendant's actions, counted above, violated the RFDCPA, those actions were done knowingly and willfully.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

- As a result of Defendant's willful and/or knowing violations of 47

U.S.C. §227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to *47 U.S.C. §227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.

- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Violations of the Electronic Funds Transfer Act

15 U.S.C. §1693 et seq.

- That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;
- Statutory damages of \$1,000.00, per Class Member, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);
- Actual damages;
- Costs and reasonable attorneys' fees pursuant to the Electronic Fund Transfer Act, §916(a)(3);
- For prejudgment interest at the legal rate; and
- Any other relief this Honorable Court deems appropriate.

FOURTH CAUSE OF ACTION

Violations of the Rosenthal Fair Debt Collection Practices Act

Cal. Civ. Code § 1788 et seq.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendant for the following:

- A. Actual damages;
- B. Statutory damages for willful and negligent violations;
- C. Costs and reasonable attorney's fees,

1 D. For such other and further relief as may be just and proper.

2 **TRIAL BY JURY**

3 60. Pursuant to the Seventh Amendment to the Constitution of the United
4 States of America, Plaintiff is entitled to, and demands, a trial by jury.

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7 Respectfully Submitted this 16th day of July, 2015.
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9
10 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
11

12 By: /s/ Todd M. Friedman
13 Todd M. Friedman
14 Law Offices of Todd M. Friedman
15 Attorney for Plaintiff
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